

Before the  
Federal Communications Commission  
Washington, DC 20554

FEB 6 12 11 PM '04

In the Matter of )

Request for Waiver )

Fennville Public Schools )  
Fennville, Michigan )

Schools and Libraries Universal Service )  
Support Mechanism )

Billed Entity No. 131516

CC Docket No. 02-6

**ORDER**

**Adopted: February 5, 2004**

**Released: February 6, 2004**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Waiver filed by Fennville Public Schools, Fennville, Michigan (Fennville).<sup>1</sup> Fennville requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company.<sup>2</sup> For the reasons set forth below, we deny the Waiver Request.

2. By letter dated March 24, 2003, SLD determined that the Commission's rules do not permit SLD to consider Fennville's waiver request.<sup>3</sup> Fennville requests a waiver of the January 17, 2002 FCC Form 471 filing window deadline because extenuating circumstances beyond its control prevented it from completing and submitting the application in a timely manner.<sup>4</sup> Fennville explains that the staff member responsible for completing and filing the relevant forms was terminated from his position prior to the application deadline.<sup>5</sup> Fennville states that the staff member refused to cooperate when asked to provide information regarding

<sup>1</sup> Letter from Jody Osbon/M. Klosner, Fennville Public Schools, to Federal Communications Commission, filed April 15, 2003 (Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. 54.719(c).

<sup>2</sup> *Id.*

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jody Osbon/M.Klosner, dated March 24, 2003. Although Fennville completed and submitted its FCC Form 470 on December 10, 2001, there is no record that Fennville submitted or attempted to submit an FCC Form 471.

<sup>4</sup> See Waiver Request.

<sup>5</sup> *Id.*

the location of the materials, passwords, *etc.*, needed to file the forms.<sup>6</sup> Fennville also states that because a new superintendent of schools and a new school board began operation in the Fennville School District, duties, responsibilities, and procedural know-how were all compromised for months while the district re-organized and re-directed its operations.<sup>7</sup> Finally, Fennville notes that the Fennville School District is a poor district which depends on E-Rate support to further serve its community's technology needs.<sup>8</sup>

3. We find that a waiver is not appropriate. A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than strict adherence to the general rule.<sup>9</sup> Applicant's assertion that changes in staff and district re-organization contributed to the filing of the application out of window are not special circumstances warranting a waiver of the filing window.<sup>10</sup> The Commission has consistently held that it is the applicant who has responsibility ultimately for the timely submission of the application.<sup>11</sup>

4. Moreover, we recognize that this application is important to the Fennville School District. It is incumbent on us, however, to take into consideration the impact that waiver of the filing deadline would have on the overall operation of the schools and libraries program. Most, if not all, applicants to the schools and libraries program frequently depend heavily on discounts from the schools and libraries mechanism. If that alone were grounds for granting a waiver, it is hard to imagine a circumstance where waiver would not be warranted, which would eviscerate the benefits of having a filing window at all. In light of this, we do not believe that the denial of

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account 'considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert. denied*, 409 U.S. 1027 (1972).

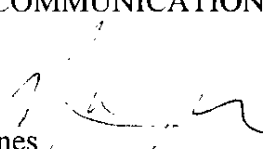
<sup>10</sup> See, e.g., *Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, FCC 03-240 (Wireline Comp. Bur. rel. Oct. 21, 2003) (*North Dakota Order*). See also *Request for Waiver by Hancock County Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-318275, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 19521 (Wireline Comp. Bur. 2002).

<sup>11</sup> See, e.g., *Request for Waiver by Center City Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-325719, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22424 (Wireline Comp. Bur. 2003).

Fennville's request creates the special circumstances or particular facts that warrant a waiver of the Commission's rules.<sup>12</sup> Therefore, we deny the Waiver Request.

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Waiver Request filed by Fennville Public Schools on December 9, 2002 IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION



Narda M. Jones  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

<sup>12</sup> See, e.g., *North Dakota Order* (finding that detrimental impact alone does not create special circumstances that warrant a waiver.); *Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4035 ('While enforcement of these requirements has a harsh consequence for these particular applicants, the underlying policy... is critical to the integrity of the program.')